

FEDERAL ELECTION COMMISSION
999 E Street, N.W.
Washington, D.C. 20463

FIRST GENERAL COUNSEL'S REPORT

MUR: 5187
DATE COMPLAINT FILED: March 16, 2001
DATE OF NOTIFICATION: April 3, 2001
DATE ACTIVATED: June 11, 2001

EXPIRATION OF STATUTE OF
LIMITATIONS: September 18, 2002¹

STAFF MEMBER: John Vergelli

COMPLAINANTS:

Mattel, Inc.
Counsel for Mattel, Inc.

RESPONDENTS:

Mattel, Inc.
Fermin Cuza
Inez Cuza
AMS Consulting Services, LLC
Alan M. Schwartz
Kathleen Schwartz
Laxmi Group, Inc.
Shankar Ram, President
Gephardt-in-Congress Committee
John R. Tumbarello, Treasurer
Menendez for Congress
Donald Scarinci, Treasurer
Friends of Barbara Boxer
Michael Ohleyer, Treasurer
Becerra for Congress
Robert J. Herrera, Treasurer
Friends of Lois Capps
David Powdrell, Treasurer
Committee to Re-Elect Loretta Sanchez

¹ The statute of limitations ("SOL") date listed in CMS is March 23, 2005, which date is five years from receipt by the Commission of the complaint. However, the events alleged in the complaint began in 1997. This Office proposes to change the CMS SOL date to September 18, 2002, which is five years from the first date on which one of the alleged conduits seems to have requested reimbursement for particular federal contributions. See part II.B., below, and Attachments 1 and 4. It should be noted that some allegations involve events that occurred after September 18, 1997, and thus have more distant SOL dates. However, this Office believes identifying September 18, 2002 as the CMS SOL date gives the most accurate "snapshot" of the SOL situation in this case.

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1 Kinde Durkee, Treasurer
2 DNC Services Corporation/Democratic National
3 Committee;
4 Andrew Tobias, Treasurer
5 Friends of Jane Harman;
6 Jacki Bacharach, Treasurer
7 Dilip S. Keswani
8 Mattel, Inc. PAC
9 Bryan Stockton, Treasurer
10 Alida Plascencia

11 RELEVANT STATUTES:

12 2 U.S.C. §§ 437g(a)(5)(B), 437g(d)
13 2 U.S.C. § 441b(a)
14 2 U.S.C. § 441f
15 11 C.F.R. § 103.3(b)(2)
16 11 C.F.R. § 104.8(c)
17 11 C.F.R. § 104.8(e)
18 11 C.F.R. § 110.1(g)
19 11 C.F.R. § 110.4(b)(1)(iii)

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21 INTERNAL REPORTS CHECKED:

Disclosure reports; Commission indices

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23 FEDERAL AGENCIES CHECKED:

None

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25 I. GENERATION OF MATTER

26 This matter was generated by a complaint from Mattel, Inc. (the "complaint").² Mattel,
27 speaking through its attorneys, notified the Commission that the corporation itself as well as other
28 persons appear to have violated the Federal Election Campaign Act due to what it describes as
29 the unauthorized activities of a former corporate Senior Vice President. Mattel represents that it
30 wishes to cooperate fully with the Commission in resolving this matter.

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² Mattel's March 16, 2001 correspondence to the Commission, which initiated this matter, has characteristics of both a *sua sponte* submission against itself, and a complaint against others. After careful consideration, this Office has decided to handle the matter as a complaint, and has informed counsel for Mattel of this decision.

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5 **II. FACTUAL AND LEGAL ANALYSIS**

6 **A. LAW**

7 Corporations are prohibited from making contributions or expenditures from their general
8 treasury funds in connection with any election of any candidate for federal office. 2 U.S.C.
9 § 441b(a).³ Section 441b(a) also makes it unlawful for any candidate, political committee, or
10 other person knowingly to accept or receive a contribution prohibited by section 441b(a). In
11 addition, section 441b(a) prohibits any officer or director of any corporation from consenting to
12 any contribution or expenditure by the corporation.

13 The Act provides that no person shall make a contribution in the name of another person
14 or knowingly permit his or her name to be used to effect such a contribution, and that no person
15 shall knowingly accept a contribution made by one person in the name of another person.
16 2 U.S.C. § 441f. This prohibition extends to persons who knowingly assist in making such
17 contributions. See 11 C.F.R. § 110.4(b)(1)(iii).

³ One of the respondents, AMS Consulting Services, is a limited liability company (LLC). A LLC is a hybrid form of business organization that combines characteristics of a corporation and a partnership. In 1999, the Commission adopted regulations covering contributions by LLCs. See 11 C.F.R. § 110.1(g). The events at issue here, however, predate the adoption of Section 110.1(g), and thus are not retroactively subject to it. At that time (i.e., before the adoption of Section 110.1(g)), when considering the applicability of the 2 U.S.C. § 441b(a) ban on corporate contributions to a given state's LLCs, the Commission looked to whether a LLC is "recognized ... as a distinct form of business organization" in that state. AO 1995-11 (Virginia LLCs are not corporations subject to the ban because the laws of Virginia recognize LLCs as a form of business organization distinct from corporations or partnerships.) The Commission reached the same conclusion with regard to California LLCs in AO 1998-11. It thus appears that the Act's ban on corporate contributions, 2 U.S.C. § 441b(a), did not apply to AMS at the time of the events at issue here.

Section 441f applies to elections for federal office, based on the definition of

2 "contribution" at Section 431(8) and the lack of any contravening language within Section 441f.

3 In other words, Section 441f does not apply to non-federal donations. *U.S. v. Kanchanalak*, 192

4 F.3d 1037, 1044 (D.C. Cir. 1999).

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B. FACTUAL SUMMARY.

The Mattel complaint, the responses to it, and the Commission's records reveal the following alleged scheme: (1) contributions were made in the name of one or more individuals, including a Mattel officer, his spouse, a political consultant hired by the Mattel officer, and possibly the consultant's spouse; (2) a business entity owned by the political consultant submitted invoices to Mattel that itemized these contributions; and (3) following approval by the Mattel officer, Mattel paid at least one of these invoices from general treasury funds, thereby reimbursing the contributors. The Mattel officer allegedly orchestrated the scheme.

1. Background.

Mattel, a Delaware corporation with headquarters in southern California, complains that Mr. Fermin Cuza, a former Senior Vice President who headed Mattel's Customs Department and Government Relations functions, manipulated certain internal processes at Mattel so that the corporation reimbursed contributions to federal committees made by him or by others at his direction. Mattel insists that it neither knew of nor approved these activities.

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1 Mattel hired Mr. Cuza about fifteen years ago from the U.S. Customs Department to
2 oversee Mattel's Customs Department. He became a Senior Vice President in 1997. Mattel
3 describes Mr. Cuza's "primary function" as "improving and streamlining [Mattel's] Customs
4 clearance procedures and ... improv[ing] Mattel's relationships with regulatory bodies."
5 Complaint, p. 4.

6 Mr. Cuza developed an "automatic payment procedure" for customs duties and related
7 costs. The procedure "would allow payment of invoices to pre-approved vendors, such as
8 Customs brokers and shipping and trucking companies, without any further review by Mattel's
9 Customs Department."⁵ According to Mattel, any given payment under this procedure was
10 likely to be "relatively small," but the aggregate of payments "totals in the millions." Complaint,
11 pp. 4-5.

12 In addition to his responsibilities in the Customs Department, Mr. Cuza "was permitted
13 by senior management to develop a Government Relations Program." Mattel asserts that before
14 this, it had no such program. Mattel reports that Mr. Cuza "perform[ed] outreach with various
15 local, state, and federal politicians," hired political and international trade consultants, and was
16 "instrumental" in creating Mattel's PAC. Mattel adds "[t]here is no evidence of improper
17 contributions or reimbursements by Mattel's PAC."⁶ Complaint, pp. 5-6.
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⁵ The actual making of the payments was outsourced to a third-party, Cass Information Systems, Inc. Mattel pre-funded Cass, and the latter made wire payments to pre-approved vendors upon presentation of invoices. Cass was not notified as a respondent because the complaint sets forth no allegations or basis on which to conclude that Cass violated the Act.

⁶ Out of an abundance of caution, the Mattel, Inc. PAC was notified of the complaint. Alida Plascencia was notified of the complaint as a respondent after she was erroneously identified as an assistant treasurer of the Mattel, Inc. PAC. Further inquiry into the Commission's records indicate that Mr. Cuza was the treasurer of the Mattel, Inc. PAC at the time of the complaint. The PAC has subsequently (May 11, 2001) filed an amendment to its statement of organization, naming Bryan Stockton as treasurer. Counsel for Ms. Plascencia submits that she has never held the position of assistant treasurer; rather she was the "Assistant to Mr. Fermin Cuza, the PAC's Treasurer," a clerical function with no decision-making authority.

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1 No later than 1996, Mr. Cuza "developed a relationship" with Alan M. Schwartz. Mattel
2 identifies Schwartz as the sole proprietor of AMS Consulting Services, LLC.⁷ Mattel describes
3 AMS as a consulting firm in "international trade and corporate and government affairs." Mattel
4 alleges Mr. Cuza sought to "enhance his own political profile," as well as promote the
5 corporation, through the "relationship" with Mr. Schwartz. Mattel paid AMS \$2,667 - \$4,000
6 per month. Mattel states that the "arrangement was within the scope of Mr. Cuza's authority and
7 he approved it on his own." Complaint, p. 6.

8 Mattel reports that Mr. Schwartz, via AMS, submitted two types of invoices to Mattel for
9 payment, each type by a different means. Of the first type were monthly invoices for his
10 consulting services, which were submitted directly to Mattel, and paid directly by Mattel.
11 Invoices of the second type were for "various international trade service issues," which were
12 "made via Laxmi." Complaint, p. 6.

13 Respondent Laxmi Group, Inc. is a California corporation. The exact relationship
14 between Laxmi Group, Inc. and Mattel is somewhat unclear at this point. In the complaint,
15 Mattel reports that Laxmi provided "[c]ustoms processing" services to Mattel. As far as
16 payments for these services go, Laxmi was apparently one of the pre-approved vendors using the
17 automated payment procedure described above. In its response to the complaint, Laxmi states
18 that it provides a bill-paying service for Mattel, issuing checks upon receipt of approved check
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⁷ Records available at the State of California Secretary of State's website do not reveal a California LLC named "AMS Consulting Services." However, there is a California LLC named "Asset Management Systems," for which Alan Schwartz is listed as the agent for service of process.

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1 requests from Mattel. It is unclear whether the two companies' respective statements describe
2 the same activity, or describe two different business relationships.

3 With regard to the invoices submitted by AMS via Laxmi, "In most instances, Mr. Cuza
4 would approve the AMS invoices for 'international trade services' and then forward them to
5 Laxmi." Mattel continues, "[u]nlike invoices for Customs expenses, which were not ordinarily
6 approved individually by Mattel, Laxmi asked to have these invoices approved because they were
7 not in the ordinary course of Laxmi's business." Laxmi would then pay AMS, and in turn seek
8 reimbursement from Mattel (through the automatic payment system). Complaint, pp. 6-7.

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According to Mattel, "Mr. Cuza admitted that Mattel 'may have' reimbursed political contributions made by others," but he was "unable to quantify the amount." Complaint, p. 7.

Mattel asserts that Mr. Cuza caused reimbursed contributions to be made through the automated payment system via Laxmi, with himself, Ms. Cuza, Mr. Schwartz, Ms. Schwartz, and AMS as conduits. Mattel submits that Mr. Cuza resigned at Mattel's request on March 13, 2001, and the complaint was filed with the Commission on March 16, 2001.

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Mattel asserts that "[b]ecause the payments to AMS for 'international trade services'

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were routed through Laxmi (and Cass) they fell outside of Mattel's normal budgetary overview."

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Mattel goes on to claim that Mr. Cuza's "intimate knowledge" of the automatic payment

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1 procedure he created "allowed him to circumvent internal controls," and that by routing the
2 reimbursements for political contributions through the procedure he took advantage of the
3 normal fluctuations in the program to disguise the activity, and was thus "unlikely to arouse any
4 suspicion within Mattel." Complaint, p. 7.

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16 **2. Specific contributions that may have been reimbursed.**

17 **(a) "Invoiced" federal contributions.**

18 Mattel provided three documents that it characterizes as "invoices" from AMS.
19 (Attachments 1, 2, 3, respectively.) Each invoice appears to itemize contributions, by committee
20 and by amount and, in some cases, by date. Mr. Schwartz, through AMS, apparently submitted
21 each invoice for payment by Mattel via Laxmi.

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2 The first document, dated September 18, 1997 (Attachment 1), simply lists ten
3 contributions by date, recipient, and amount.¹⁰ Complaint, p. 7. The second and third
4 documents (Attachments 2 and 3), dated November 30, 1997 and January 6, 1998, respectively,
5 also list contributions, and each has as a heading, "Various International Trade Consulting
6 Services." Complaint, pp. 9-10. Each of the three "invoices" itemizes federal and state
7 (California)¹¹ contributions.

8 Seven federal candidates and/or committees are identified on the AMS invoices (Attachments
9 1, 2, 3):

- 10 • Gephardt-in-Congress Committee, and John R. Tumbarello, Treasurer;
- 11 • Menendez for Congress, and Donald Scarinci, Treasurer;
- 12 • Friends of Barbara Boxer, and Michael Ohleyer, Treasurer;
- 13 • Becerra for Congress, and Robert J. Herrera, Treasurer;
- 14 • Friends of Lois Capps, and David Powdrell, Treasurer;
- 15 • Committee to Re-Elect Loretta Sanchez, and Kinde Durkee, Treasurer;
- 16 • Friends of Jane Harman, and Jacki Bacharach, Treasurer.

17 With regard to both the document dated September 18, 1997 (Attachment 1) and the
18 document dated November 30, 1997 (Attachment 2), Mattel reports that it attempted to trace
19 payment of each "invoice" through Mattel, but "to date we have not been able to locate any direct
documentary evidence that this invoice was paid." Complaint, p. 8.

¹⁰ Although Mattel characterizes this document as an "invoice," it is essentially little more than a table detailing ten political contributions made between June 13, 1997 and September 25, 1997. Six of these contributions were to federal candidates. The only link to Mr. Schwartz or AMS, appearing on the face of the document is a fax machine sender identification line at the top of the first page indicating that the document was transmitted from "Asset Mgmt Systems, LLC."

¹¹ Mattel has notified the California Fair Political Practices Commission with regard to the apparent state contributions.

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1 The document dated January 6, 1998 (Attachment 3), was for \$4,000. Mattel reports that
2 in their investigation, they "obtained back-up documentation from LAXMI for this invoice
3 indicating that AMS Consulting was paid \$4,000 through LAXMI in the first quarter of 1998."
4 Specifically, according to documentation provided by Mattel, the corporation made four
5 payments to AMS through Laxmi in the first quarter of 1998, one of which was for exactly
6 \$4,000, the amount on the AMS invoice. Complaint, p. 10.

7 Mr. Cuza, Ms. Cuza, Mr. Schwartz, and Ms. Schwartz were making contributions during
8 this time-frame. Some of these contributions can be at least provisionally linked to the
9 contributions itemized on the AMS invoices.¹² For example, on the "September 18, 1997
10 Invoice" from AMS (Attachment 1), one of the entries indicates a June 13, 1997 contribution to
11 Menendez for Congress for \$1,000. Commission records indicate that that committee reported a
12 contribution of \$1,000 from Mr. Schwartz on June 23, 1997. Also, that same invoice itemizes an
13 entry for "Mr. Fermin Cuza/Becerra" for \$2,000 with a date of August 4, 1997. Mr. Cuza and
14 Ms. Cuza each contributed \$1,000 to Becerra for Congress (both contributions were designated
15 for the primary election) on September 23, 1997.

16 As to the business entity, AMS Consulting Services, LLC or Asset Management Systems,
17 LLC, the September 18, 1997 invoice (Attachment 1) has a line item for a \$2,000 contribution,
18 dated August 14, 1997. For this item, under the heading "Recipient/purpose" is noted, "Becerra
19 pd. by AMS." The "Becerra" part of this notation may refer to Becerra for Congress, a federal
20 committee. The "pd. by AMS" may refer to contributions by Schwartz, or another individual
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¹² A summary table of tentative links between the "invoiced contributions" itemized on the AMS invoices provided by Mattel, and actual contributions made by these four individuals is in Attachment 4.

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(e.g., Mr. Cuza), or perhaps a contribution of AMS's funds. A search of FEC records reveals no contributions made in the name of the business entity.-

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14 **Seven federal committees received federal contributions apparently itemized on the**
15 **invoices from AMS (i.e., Attachments 1, 2, and 3). All of these respondents (the committees and**
16 **their respective treasurers) argue that they had no reason to suspect that they had received illegal**
17 **contributions. In this vein, most of them note that the complaint states "[t]here is no evidence to**
18 **suggest that any of the political candidates or parties were aware that Mattel reimbursed the**
19 **third-party contributions or that the payors listed on the contribution checks were conduits." All**
20 **seven of the committees inform the Commission that they have refunded or disgorged the**
21 **relevant contributions, and have provided copies of such checks.**

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3 **(b) Non-federal contributions to DNC.**

4 In May 2000, Mr. Cuza received solicitations from DNC for soft-money contributions.
5 At least one of these solicitations came from Rep. Loretta Sanchez, apparently acting in her
6 capacity as General Co-Chair of the DNC; Rep. Sanchez's principal campaign committee is a
7 respondent in this matter. Based on the complaint, including the supporting documents, it
8 appears that Mr. Cuza made commitments to DNC fundraisers to contribute at least \$100,000 to
9 DNC in 2000.

10 Mattel itself directly made a \$25,000 non-federal contribution to DNC. Mattel reports,
11 "AMS and LAXMI made \$25,000 and \$50,000 contributions, respectively, and Mattel ultimately
12 reimbursed these amounts through payments made by Cass to LAXMI."

13 DNC responds to the complaint's allegations about non-federal contributions by noting
14 that it first learned of these matters from an attorney for Mattel in late March. From this attorney
15 DNC learned that it may have received three contributions, all deposited in DNC's non-federal
16 corporate account, which may have been from Mattel although ostensibly made by others: a
17 \$25,000 contribution from AMS Consulting Services, and two \$25,000 contributions from
18 Laxmi Group, Inc.¹³ DNC states that it amended its reports to the FEC to reveal the true source
19 of the contributions previously reported as from AMS and Laxmi, and that it refunded all of the

¹³ Laxmi wrote at least two checks to the DNC in 2000. The first check, dated June 30, 2000 was for \$25,000, and the second, dated July 17, 2000, was also for \$25,000. Although both checks were made out to the "DNC Federal Account," DNC in fact deposited the checks to its Non-Federal Corporate Account. Both of these checks had the following notation on the "memo line" of the check itself: "c/o Mattel, Inc." DNC reported these contributions as from Laxmi. Laxmi argues that these notations on the memo line notified DNC of the true source of the contribution. As explained below, however, these non-federal contributions do not violate the FECA even if they occurred as Mattel alleges.

1 contributions to Mattel, as an act of good faith toward Mattel "because of the unauthorized nature
2 of the disbursements."

3 DNC argues that it did not violate 2 U.S.C. § 441f because it did not "knowingly" accept
4 contributions made in the name of another. They point to the complaint, which states "[t]here is
5 no evidence to suggest that any of the political candidates or parties were aware that Mattel
6 reimbursed the third-party contributions or that the payors listed on the contribution checks were
7 conduits." In addition, DNC argues that 2 U.S.C. § 441f does not apply to non-federal
8 contributions.

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16 **C. ANALYSIS**
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11 **General treasury funds of the corporation thus were apparently the true source of federal**
12 **contributions made in the name of others, most likely Mr. Cuza and Mr. Schwartz, and perhaps**
13 **others. The consequences of this are discussed on a respondent-by-respondent basis below.**

14 **(b) Non-federal contributions that may have been reimbursed.**

15 **Mattel suspects that it may have been the original source of at least three non-federal**
16 **contributions to the DNC that were made in the name of others (*i.e.*, one non-federal contribution**
17 **by AMS, and two by Laxmi).**

18 **Even if this is true, there has been no violation of the Act. Mattel is not prohibited by the**
19 **Act from being the source of non-federal contributions; *i.e.*, corporations may directly make non-**
20 **federal contributions. Moreover, there is no limit under the Act on the amount of such corporate,**
21 **non-federal contributions. Finally, Section 441f does not apply to non-federal contributions.**

22 **Therefore, this Office recommends that the Commission find no reason to believe that Mattel,**
23 **Inc., Fermin Cuza; AMS Consulting Services, LLC (aka Asset Management Systems, LLC),**

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1 Alan Schwartz, Laxmi Group, Inc., Shankar Ram, or DNC Services Corporation/Democratic
National Committee, Andrew Tobias, Treasurer, violated 2 U.S.C. § 441f with regard to non-
3 federal contributions from Mattel, Inc., Laxmi Group, Inc. and AMS Consulting Services, LLC in
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8. Committees identified on the AMS invoices.

If the contribution reimbursement scheme operated as Mattel suspects, then each of the federal committees itemized on the AMS invoices (Attachments 1, 2, and 3) appears to have received a contribution made by one person in the name of another, and also appears to have received a contribution of corporate funds. However, even if this is true, each of the seven

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1 committees insisted that it had no reason to suspect at the time that it received the contributions
2 that they were unlawful, and there is nothing to indicate that any of the committees should have
3 found the contributions suspicious. Finally, all of the committees have subsequently disgorged
4 or refunded the relevant contributions. *See* 11 C.F.R. § 103.3(b)(2).

5 With this in mind, this Office recommends that the Commission find no reason to believe
6 that Gephardt-in-Congress Committee, and John R. Tumbarello, Treasurer; Menendez for
7 Congress, and Donald Scarinci, Treasurer; Friends of Barbara Boxer, and Michael Ohleyer,
8 Treasurer; Becerra for Congress, and Robert J. Herrera, Treasurer; Friends of Lois Capps, and
9 David Powdrell, Treasurer; Committee to Re-Elect Loretta Sanchez, and Kinde Durkee,
10 Treasurer violated the Act and close the file as to these respondents.

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10. Mattel, Inc. PAC, Bryan Stockton, Treasurer, and Alida Plascencia.

There is no allegation of improper contributions or reimbursements by the Mattel, Inc. PAC. The Mattel, Inc. PAC is not mentioned on any of the invoices Mr. Schwartz submitted (through AMS) for reimbursement by Mattel. Moreover, a review of the PAC's reports reveals that its receipts have been limited to contributions from senior officers of the corporation, and that there have been no disbursements that could have been reimbursements for contributions.

Ms. Plascencia was notified of the complaint in the mistaken understanding that she was an assistant treasurer of the PAC. Her only apparent liability would be derivative of the PAC's liability as an assistant treasurer of the PAC, and according the statements of organization filed

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1 by the Mattel, Inc. PAC with the Commission, Ms. Plascencia has never been listed as a treasurer
or an assistant treasurer of the PAC.

3 This Office recommends that the Commission find no reason to believe that Mattel, Inc.
4 PAC, Bryan Stockton, Treasurer, or Alida Plascencia violated the Act with regard to the
5 circumstances arising from the complaint, and close the file as to these respondents.

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IV. RECOMMENDATIONS

1. Find no reason to believe that Mattel, Inc., Fermin Cuza, AMS Consulting Services, LLC (aka Asset Management Systems, LLC), Alan Schwartz, Laxmi Group, Inc., Shankar Ram, or DNC Services Corporation/Democratic National Committee, Andrew Tobias, Treasurer, violated 2 U.S.C. § 441f with regard to non-federal contributions from Mattel, Inc., Laxmi Group, Inc. and AMS Consulting Services, LLC in 2000.

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9. Find no reason to believe that Gephardt-in-Congress Committee, and John R. Tumbarello, Treasurer; Menendez for Congress, and Donald Scarinci, Treasurer; Friends of Barbara Boxer, and Michael Ohleyer, Treasurer; Becerra for Congress, and Robert J. Herrera, Treasurer; Friends of Lois Capps, and David Powdrell, Treasurer; Committee to Re-Elect Loretta Sanchez, and Kinde Durkee, Treasurer, violated the Act with regard to this matter, and close the file as to these respondents.

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12. Find no reason to believe that Mattel, Inc. PAC, Bryan Stockton, Treasurer, or Alida Plascencia violated the Act with regard to this matter, and close the file as to these respondents.

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Date

Lawrence H. Norton

Lawrence H. Norton
General Counsel

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